### BEFORE THE CITY COUNCIL CITY OF SEATTLE

In the Matter of the Application of

#### SEATTLE CHILDREN'S HOSPITAL

for approval of a Major Institution Master Plan

Hearing Examiner File No. CF 308884

LAURELHURST COMMUNITY CLUB'S REPLY<sup>1</sup>

#### I. INTRODUCTION

The key <u>land use decision</u> now before Council is whether, under the Code, Children's is entitled to approval of its demand for a tripling in development, and acres of institutional boundary expansions, in one Seattle neighborhood. The Seattle Hearing Examiner answered this question with a carefully considered "No." The Hearing Examiner's August 11, 2009 decision makes it very clear that the law and the Record require denial of Children's uncompromising demand for a tripling of development on its Laurelhurst campus.



<sup>&</sup>lt;sup>1</sup> Because DPD's arguments are generally cumulative with Children's and/or offer little or no colorable responses to LCC's appeal, this optional Reply will focus on Children's Response. However, along with LCC's Appeal and Response, in doing so, it responds to claims by various other appellants including DPD.

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LAURELHURST COMMUNITY CLUB'S REPLY - 2

Children's September 21 Response tells the Council that approval must be a foregone conclusion because Children's provides a public benefit and there is a need in Washington for pediatric services. It then tells the Council that it should skate by the Examiner's denial decision and proceed directly to consideration of conditions for approval. Neither of these premises are correct.

The Examiner's denial decision did not turn on whether pediatric services are needed in the state of Washington. She presumed that there is a need on a statewide basis. Nor did it turn on whether Children's provides a public benefit. What Major Institution worth its salt would not meet the Code's abstract benefit and need tests? But, as the Examiner's professional analysis makes clear, these are the beginning – not the end – of the inquiries under the Code.

What Children's omits before the Council is the critical other side of the equation. The Code requires a balancing of the institutional proposal with the:

"need to protect the livability and vitality of adjacent neighborhoods"<sup>2</sup>

The Code also repeatedly discourages and penalizes expansion of institutional boundaries. And, it explicitly suggests as an alternative that development occur in satellite locations at least half a mile away. Contrary to Children's Response, claiming greater latitude because it is not "new", these principles apply equally to existing as well as new institutions.<sup>3</sup> All major institutions existing at the time of the original 1983 Major Institution Code adoption have had master plans go through City Council, some twice. None in a context

<sup>2</sup> This need is called out more than once in the Code. One instance is in SMC 23.69.002.

<sup>3</sup> DPD does not make this claim. Nor does Children's cite any cognizable support for this new interpretation of the Major Institutions Code.



comparable to that in which Children's exists – low density, <u>non</u>-urban village – have anywhere near the height, bulk and overall development "latitude" that Children's demands.

What the Examiner ultimately decided after an exhaustive and searching process was that Children's had not made the case for its all or nothing approach. The extraordinary development necessary to meet an explicitly "statewide" need for pediatric services could not, consistent with the balancing required by the Code, all occur in one residential neighborhood in Seattle – even assuming if really had to be met by Children's alone among all institutions north, south, east, and west in the state of Washington, In doing so, the Examiner pointedly concluded that Children's had tied the process' hands by refusing to allow consideration of development alternatives.

This all or nothing approach on Children's part – demanding a tripling of development to 2.4 million square feet, <u>all</u> in Laurelhurst, to meet Children's assumption of a statewide need – did not serve either the process or Children's well. Laurelhurst and interested parties long ago pleaded/stated/offered that what is only by comparison a "moderate" expansion of Children's in Laurelhurst – <u>doubling</u> the current development – would gain quick agreement. Children's refused to even discuss such an alternative. Children's gambled that the Major Institutions Code balancing requirement and the explicit Code option for MIMP denial did not apply.

Even at this stage, in a striking lack of leadership, Children's refuses to contemplate a remand by the Council to address options short of denial. Children's Response Brief to Council takes this approach "over the top." According to Children's, healthcare will suffer if its MIMP is not approved right now for what it wants, where it wants it <u>and</u> other institutions would be given "a horrible signal."



Clearly, Children's believes this signal" argument is its political "money shot" with the Council, and therefore leads with it in the introduction to its Response Brief. However, contrary to what Children's tells the Council, this is not a "policy" decision. Nor is it a matter in which the earlier parochial and political recommendations by the CAC and the Executive have equal weight with the decision issued by the Examiner after an extensive Codeprescribed hearing and review process. Per the Code, they do not.

Instead, the Council's role is to sit in this matter as a quasi-judicial body to review, specifically, the Examiner's recommendation. Each Councilmember must personally, carefully review the entire Record before the Examiner including the recordings of eight days of hearings and the thousands of pages of exhibits, comments, and other submissions.

Per SMC 23.76.056A, unless a material error in the Examiner's decision is <u>proven</u>, the Examiner's decision must stand. Children's threat that upholding the Examiner would send a "signal" to other institutions is not a basis for overturning the Examiner. It is a political argument that has no place in this quasi-judicial land use process.

Even if Children's resort to a political argument were not off-base, the argument it offers does it no credit. It is <u>not</u> a "horrible signal" for the Council to stand by what the Code says: the Major Institutions Code is not a blank check; context matters; and a balance must be achieved.

It <u>would</u> be a "horrible signal" if the Council were to accept Children's premise that, regardless of what the Code says, MIMPs cannot be denied approval no matter how egregious or excessive. What signal would <u>that</u> send to the neighborhoods: that the Code does not mean what it says when it requires a balance and contemplates denial when one is absent?



The only "signal" that should be read into the Examiner's denial is that Children's has been unrealistic and inflexible in its demands. Its proposal greatly exceeds and is not typical of other institutions that, like Children's, are in low density areas outside of urban villages.

Not a single major institution outside of an urban village has an MIO district height greater than 105'. Recently adopted master plans for South Seattle Community College (2007) and Seattle Pacific University (2000) show their FAR and lot coverage are much less than Children's proposal. And when Seattle Pacific University sought to expand its boundary to nearby residential properties, the MIO heights approved in the expanded areas were 37' and structures were conditioned to comply with the underlying density or height standards to protect the neighborhood and preserve its scale. Ex. 22, at 14-15 and Attachments H and I.

Children's proposed MIO 160 foot height designation would be more than 5 and 6 times the maximum zoned 25- and 30-foot heights of surrounding and underlying zones. Its 140 foot building height limit would be more than 4½ and 5½ times the maximum zoned 25- and 30-foot heights of surrounding and underlying zones. Children's current master plan, now in effect, has MIO/building heights that reflect a more appropriate consideration of context. Limits on building width and depth, established in multifamily zones to reduce height, bulk and scale impacts, would be eliminated in Children's new plan. Children's proposed lot coverage of 51% is a significant increase over the maximum 35% allowed in the single family zone that underlies the Children's campus and that is allowed in the current master plan.

Children's mistakes the Examiner's good practice for uncertainty when it claims that the Examiner's listing of fallback conditions is "an admission of uncertainty as to her recommendation of denial." There is not an iota of "uncertainty" expressed in the Examiner's decision recommending denial. And, it is in fact common for judges and judicial



decisonmakers to offer alternative findings when rendering a decision that is certain to be appealed. Here, the Examiner knew for a certainty that Children's would appeal because it had not given an inch of ground throughout the proceeding.

The Examiner's denial, which she clearly knew would not be welcome, but which she clearly indicated Children's had brought on itself, must be the first and foremost order of business in the Council's review. Remand, fallback conditions, or other remedies are only an appropriate topic if Children's has <u>proven</u> to the Councilmembers, after detailed personal review of the entire Record, that the Examiner's denial recommendation was in error. Children's has failed in this burden of proof.

### II. REPLY IN SUPPORT OF LCC APPEALS OF EXAMINER FALLBACK CONDITIONS

Children's pretends that it disagrees with little in the Examiner's fallback conditions in contrast to LCC. In particular Children's suggests that it only "disagrees" with three Examiner conditions. The rest of its change requests, Children's says, are "clarifications.," in contrast it says with LCC's greater number of "disagreements". LCC has of course proposed that the Council modify several of the Examiner's fallback conditions and LCC has given reasoned Record-based explanations as to why. Arguing, as Children's does, about whether proposed changes are mere "clarifications" (the label Children's applies to at least half of its complaints) is pointless. What is important for the Council to know is that LCC believes that its proposed changes are compelled by the Record and the Code.

A. <u>If the Council Were to Reverse the Hearing Examiner's Denial</u>

Recommendation, Any Resulting Master Plan Approval Should Be
Conditioned, as was Urged by LCC Throughout This Master Plan



### <u>Process, On New Development of 704,000 Gross Square Feet Not Including Parking Garages.</u>

#### 1. Children's Response Incorrectly States What LCC Has Proposed.

Children's Response "frames" this issue by continuing its practice of playing with the numbers: it now claims that LCC has demanded that Children's be limited to new development of "654,000 gross square feet." This is incorrect. LCC has consistently proposed that Children's be allowed to virtually double by developing an additional, approximately 708,000 square feet based on the Hearing Examiner's calculations, or 704,000 square feet based on LCC's calculations – not including parking.

This would result in total overall Children's development of 1.554 million square feet, compared to the current approximately 850,000 square feet not including parking. See LCC Appeal, p. 17, 36.

Here is what LCC actually said in its Appeal:

In light of the foregoing, if the Council were to reverse the Hearing Examiner's denial recommendation, any resulting Master Plan approval should be conditioned, as was urged by LCC throughout this master plan process, on new development of no more than 704,000 gross square feet. [This includes above-and-below square footage, including mechanical and circulation areas, but not including parking garages.]

This "reduced" amount is still nearly 3 times the amount of new development that was approved in Children's last Master Plan and would almost double Children's current facility. As such, it is still a significant expansion that will have significant impacts.

Under this alternative, the maximum allowable square footage within the MIO (full build out of new projects combined with current actual development of 850,000 square feet)<sup>4</sup> would be 1.554 million gross square feet.

<sup>&</sup>lt;sup>4</sup> The current MIMP allows an overall gross square footage of 900,000 but Children's has only developed approximately 850,000.



This overall square footage would accommodate all of the development square footage that Children's has indicated it actually "plans" to build: its new 262-bed Bed Unit North; plus its speculative, "potential" Phase 2 Ambulatory Expansion; and the speculative, structured parking that was proposed to support this development (1100 parking spaces).

# 2. Total Square Footage for Children's Must Include and Count Mechanical Space

In its Response brief (beginning on page 5 at 13), Children's describes Hearing Examiner fallback Condition 1, which addresses the overall square footage that should be approved for Children's master plan, as allowing "an additional 1,500,000 square feet of development in the proposed Master Plan (i.e., total campus development of 2,400,000). . . The City Council should incorporate the Examiner's proposed Condition 1 and approve Children's Master Plan for the requested 1,500,000 additional developable square feet." This statement implies that the square footage in the Hearing Examiner's fallback Condition 1 is the same as the square footage that Children's is now requesting. This is not accurate.

Children's has asked City Council to exclude all mechanical space from the Plan's overall square footage limit. A hospital's mechanical space would likely comprise a comparatively large percentage of the hospital and, by Children's own description, would translate into a "significant" amount of building structure. Children's Appeal, p. 22 at 7. The Hearing Examiner disagreed with Children's, and appropriately concluded and recommended in fallback Condition 1 that the overall 2.4 million square feet (additional 1,500,000 square feet) should include mechanical space. Findings 56, 57; Conclusion 15.



As correctly noted by the Examiner in Conclusion 15, the Environmental Impact

Statement "expressly included [mechanical space] in Children's square footage calculations".

The EIS describes full build out of Children's proposal as expanding "the hospital (including ancillary, mechanical and general plant) to a total of approximately 2,357,000 square feet."

Ex. 6, p. 2-27; emphasis added. By asking for mechanical space to be excluded from the overall square footage limit, Children's is, in effect, seeking much more square footage and building bulk than had been understood by the public throughout the master planning process and, importantly, described and analyzed in the EIS. <sup>5</sup>The Council should reject Children's proposed amendments to Conditions 1 and 2. There has been no analysis of the environmental impacts of the proposals. They are in conflict with the Environmental Impact Statement, and could change the scope and impact of the proposed Plan. If the Council wants to consider such amendments, a supplemental EIS is needed. SMC 25.05.600(C)(2).

In sum, while LCC does not agree with the amount of square footage in the Examiner's fallback Condition 1, it does agree that the overall square footage limit should include and apply to mechanical space.

3. <u>As the Examiner Held, Need for Pediatric Service Across the State Does</u>

Not Equate to Entitlement For Excessive Development in One Residential

Neighborhood In Seattle.

<sup>&</sup>lt;sup>5</sup> Similarly, the Examiner's fallback Condition 2 has recommended that all mechanical space, except for rooftop, be included in the floor area ratio (FAR) limit for the master plan, and Children's has objected to this inclusion as well.



The Council should examine closely what the Examiner actually said about need, as opposed to Children's spin on it. Children's buries the key premise of the Examiner's findings and conclusions on this point.

The Examiner, in Conclusion 6, acknowledged that a "statewide" need for pediatric services was sufficient to support the <u>amount</u> of development requested. In doing so, she observed that ". . . It [Children's] states that no other health care provider proposes to fill any of the need. No evidence was produced at the hearing to refute this claim." HE Finding No. 35. This is not surprising: why would the established pediatric hospitals in Tacoma and Spokane, for example, ever come to Seattle to contest Children's Seattle <u>land use</u> application – even if they received notice of it?

So, the Examiner acknowledged that, at the end of the day, she would have no choice but to accept Children's description of a statewide need. But, contrary to Children's spin, the Examiner was careful <u>not</u> to equate a <u>statewide</u> need extending east all the way across to Spokane, all the way south to Vancouver, and north past Everett to Bellingham and beyond with the idea that the need must be met by requiring all patients to travel to one location — Laurelhurst. Her conclusion on this point was unmistakable:

Therefore, even if Children's could demonstrate that it should absorb the entire statewide need for specialty pediatric care, it is not necessarily entitled to this intensity of development, in this place, at this time.

Hearing Examiner Conclusion 46.

Children's Response ignores this key point made by the Examiner. Instead it rehashes subsidiary arguments about need. For the most part, reply to this rehash would not be fruitful in light of how the Examiner resolved the issue of need. However, the Council should be aware of some background from the Record that bears on Children's rehash:



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- Starting in 2005 Children's vigorously opposed a Swedish Hospital application to the Washington Department of Health for approval of eight pediatric beds in a new hospital in Issaguah. Children's cited declining use rates for inpatient pediatric care and concern about its own market share as reasons that the Washington Department of Health should not allow Swedish to build pediatric beds on the Eastside despite substantial population growth there. Children's went so far as to appeal the Department of Health decision approving the beds over Children's objection. HE Ex 22, Attachment B and p. 5.6 Children's Response now criticizes LCC by saying that it "LCC toys with bed need and square footage as if it were something divorced from the reality of hospital care that is necessary for children." It is all too easy for Children's to criticize a community group and claim it is ignoring health care needs when the group asks pointed questions – even in a land use process where the Code explicitly invites such participation. But, Children's has nothing intelligible to say about how it "toyed" with – actually litigated against – Swedish Hospital's Eastside hospital pediatric bed expansion. Are questions about a hospital's expansion plans only legitimate when they come from a competitor such as Children's whose announced purpose is to protect its "market share?"
- Children's justifies its proposed tripling in development square footage by projecting a need to drastically increase its psychiatric beds (as opposed to acute care beds) from 20 to nearly 200. However, psychiatry and psychiatric beds/facilities are not even mentioned, as a growth area or at all, in Children's 2006 Strategic Plan, in its Master Plan description of growth areas, or its "Need to Grow" presentation to CAC. HE Ex 22, Attachment E and p. 5-6; HE Ex. 4, p. 15. Children's only cited the statewide need for psychiatric beds as justification for tripling its development in Laurelhurst after its initial justifications were met with skepticism.
- It is not accurate for Children's to say that its projections of need and data are undisputed. They were deconstructed before the Examiner by Nancy Field, an experienced consultant in the discipline of hospital planning and need projection, and whom the Examiner herself described as a credible expert. Examiner Conclusion 4. Ms Field's credentials include teaching at the University of Washington and work with a host of Washington medical institutions on hospital planning and need analysis. In fact, her work experience includes a substantial stint at Children's itself. Ms. Field presented data and projections pointing to different conclusions than those argued by Children's. See, e.g. Exhibits 51-66 and testimony related thereto. As described above, the Examiner chose to accept Children's projections, but not Children's assumption that general statewide need was tantamount to an entitlement to Children's to satisfy it all in Laurelhurst.

<sup>&</sup>lt;sup>6</sup> These Exhibits provide important context for how the Examiner addressed "need" and are part of the Record which each Councilmember must review



Children's continues in its impatience with any attempt to critically analyze its expansion proposal. Children's Response describes as "simplistic" LCC's reference to Children's current Master Plan as context for the new one Children's is now proposing. However, it would be irresponsible not to compare the proposed development with what was approved in Children's current master plan. How else will decision-makers visualize and understand the magnitude and impacts of Children's proposed expansion? In addition, Code provisions contemplate an assessment of a major institution's adopted master plan. For example, SMC 23.34.008.E.4, one of the rezone criteria that provides direction for appropriate zoned height states that "the following zoning principles shall be considered":

4. In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.

Children's Response also suggest that LCC's proposal for an effective doubling of development on Children's campus only mimics the level of development that was approved in the current master plan. This is not correct. LCC's proposal would: significantly expand the MIO boundary to include 6.75 new acres; would increase the current maximum MIO height limit from 90' to 105'; would significantly enlarge the current footprint where tall tower heights of 90' and 105' would be allowed; and would nearly double the size of the existing facility from about 850,000 sf to 1.554 million sf.

In several instances, the exaggerated arguments in Children's response brief trip over themselves. By trying to prove too much, they prove much less. For example, Children's Response justifies its development proposal as in part based on "catch-up." Children's tells the Council: because "53 of Children's 250 beds are in *double rooms*, a condition that no



longer meets the best standards of pediatric hospital care — 53 new single bed rooms must be built just to correct this anomaly..." However, converting 53 double bed rooms to 53 single bed rooms does not require constructing 53 additional rooms: only one half that amount of new construction is required.

In any event, LCC has never objected to development that would eliminate the double bed rooms. LCC's proposed square footage would allow Children's to develop all the square footage and beds that Children's has identified as "planned," and then some.

#### 4. There is No Pre-Emption of Land Use Regulation for Hospitals.

As Hearing Examiner Findings 42, 43, and 45 and the CAC minutes Exhibit 8 convey, the CAC ultimately acquiesced in Children's projections of need with the understanding that the issue would be thoroughly vetted during the Washington Department of Health Certificate of Need process. Children's acknowledges this and tries to set up a conflict between the state's Certificate of Need regulations and the Seattle Land Use Code arguing that Seattle is trying to arbitrarily limit its growth and decide its bed need. Again, these arguments persist in misdirection.

The Examiner's decision is careful not to enter this thicket. The "statewide" need that Children's has posited is acknowledged. What is not accepted is Children's claim that, if it decides to serve an entire statewide need, it is entitled to whatever zoning and development it takes to do so in Laurelhurst. Nothing in the state Certificate of Need regulatory program gives an institution a free zoning pass, pre-empting local land use laws. If the Legislature had intended that hospitals write their own zoning tickets, it could have easily adopted a measure saying so. It has not. Instead, local governments continue to have the responsibility, as under the Seattle Code, to ensure the livability and vitality of an institution's surrounding



neighborhood, while the Department of Health is ultimately responsible for need determinations.

Why then, after railing against City interference and making legally menacing comments about the City's lack of authority in the "need" arena, has Children's announced before the Council that it will not oppose the CAC recommendation that:

Prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the Master Plan, Children's shall provide documentation to the Director and the CAC clearly demonstrating that the additional construction requested is needed for patient care and directly related supporting uses by Children's, including administrative support.

See Hearing Examiner Condition 17.

It appears that Children's would rather not have the City actually rely on and defer to a need determination by the <u>experts</u> at the Washington Department of Health. Instead,

Children's would prefer that the City rely on a determination by DPD and the CAC – both of whom Children's has previously acknowledged have no expertise or authority in the field.

Children's had it right the first time. Now that its Response has pointed out that whether a particular state need is appropriately met by a particular institution is a determination reserved to the Washington Department of Health, it is clear that Hearing Examiner Condition 17, based on the CAC recommendation, should be modified. Instead of "demonstrating the need-appropriateness of it proposals to bodies with no expertise or authority in the field (CAC and DPD), Children's should be required to provide a Certificate of Need from the Department of Health "prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the Master Plan..."



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## C. The Examiner's Fallback Condition Allowing Designations Of MIO 160 And Heights Up To 140 And 125 Feet Should Be Modified To Limit Heights To No More Than 105 Feet.

Condition No. 3 in the fallback conditions drafted by the Examiner to address the possibility that Children's would appeal and overturn her denial recommendation, authorizes an MIO 160 designation with, for now, maximum heights of 140 and 125 feet. Not surprisingly, Children's argues in favor of retaining this condition as reflecting its "carefully tailored" plans.

In fact, the structures shown in the master plan are concepts. They have not been designed and Children's has not provided, at least for public review, data that would support its claim that functionality cannot be achieved in a 105 foot tall tower. Children's refused to model the effect of reducing the towers to a 105' height limit, either with maximum square footage or reduced square footage. Exhibit 8, p. 205. Children's has then used this as part of its all or nothing strategy: who can address whether an alternative will or will not work if Children's will not model and discuss them? The site/building elevations and oblique views of the proposal in Children's final master plan (HE Ex 4, Figures 38 and 39) do not show building connections on the top floors of the new buildings, as Children's now claims is essential, but at lower levels that would be within the 105' height envelope. These same site/building elevations as well as Children's topographical data – all that Children has released – show that, even if Children's were allowed the full measure of development it has demanded, a 105' limit would reduce the tallest tower(s) proposed by Children's for the Laurelon terrace property by floor. Of course, greater reduction could be achieved if over-all development square footage were limited. If the Council determines that it will overturn the Examiner's denial recommendation, a remand with directions that Children's cooperate in



modeling structures/towers within a 105 foot height limit, and provide the necessary data rather than conclusory statements is absolutely necessary to an informed alternative decision.

Children's also claims that the higher heights it demands are not only necessary and beneficial, but are also: "a very small percentage of Children's campus." However, when one adds up the percentages Children's cites, as described in LCC's Response (p. 26-27), the percentage of the new, tall MIO districts, which would allow building heights taller than currently permitted on campus, is nearly 20% of the campus, or 6 acres! This is not "small." Children's says that these figures are an overstatement because they are only "zones" in which actual buildings would be designed, but there is no condition that limits how much of the zone can be developed to the maximum allowed height. Notably, the "illustrations" Children's deploys now to show a more moderate approach have not been incorporated into the binding conditions it supports and are so nonspecific as to make such incorporation problematic.

Continuing in its all or nothing vein, Children's posits that if it does not get the heights it demands, then "it would likely push more bulk to the perimeters of the campus, including 40<sup>th</sup> Avenue NE and NE 45th, two areas of concern for the Examiner. See Conclusions 19 and 20." Children's Response, p.14-15. The message is clear: "Don't like tall tower height? Then you get bulky buildings, reduced setbacks and less open space. Don't like that? Then it's back to tall buildings." Impacts are shifted, not mitigated as Children's presents the situation as a mandatory Hobson's Choice.

Again, this is why the Examiner recognized that denial was required because

Children's confronted her with as an institution that would not offer even for comparison a

modestly reduced development alternative. LCC did offer one: a package proposal including



reduced square footage and reduced building heights as well as other mitigating components like an increased setback along NE 45th Street and a below-grade Southwest parking garage (if built). Structures would not be bulkier or closer to less intense, perimeter zone edges. The tower(s) would be just as slender or more so, and shorter. Children's rejected such possibilities out of hand. However, the Council need not do so and can remand to require that they be studied.

LCC's Appeal, including the very pages cited by Children's to argue that LCC ignores the subareas (e.g., LCC Appeal at 9), clearly acknowledges the 125' and 140' subareas within the MIO 160 height zone proposed by Children's. What LCC points out though, is thatthe MIO 160 district designation has meaning under the Code that is different from and independent of the subarea heights. If formally established by Council, the higher MIO 160 sets the stage for increases height, either within the MIO 160 or in other MIO districts on campus. See SMC 23.69.035. In other words, while Children's makes light of it now, the effects of a zone height designation of MIO 160 – regardless of what conditions are imposed now – are not to be disregarded.

Children's complaint that there is no impact analysis regarding LCC's requested MIO 105' is rich with irony in light of the fact that it was Children's itself that rejected all requests for such an analysis. Meanwhile Children's dismisses as "coincidence" the comparison to 105 foot maximum MIO heights of other institutions that are in settings similar to Children's low density residential neighborhood, including those that are outside of urban villages. But, MIO heights are established based on neighborhood context, the balancing that is required in

 $<sup>^7</sup>$  This repeated tactic by Children's – setting up a faux disagreement so that it can be readily and self-righteously knocked down -- is not constructive.



the Major Institutions Code, and the Code's various rezone criteria. Those that have been established to date show that Council has never approved an MIO height greater than 105' in a residential neighborhood like Laurelhurst. This is a fact, regardless of whether the institution has a "first generation" master plan or a more recently adopted plan.

Of Seattle's 13 major institutions (including the University of Washington), only five have MIO heights greater than 105' – Swedish, Harborview, Virginia Mason, Seattle University and the University of Washington. All of these major institutions are located in intensely zoned and developed neighborhoods – neighborhoods that were also, not "coincidentally," designated as urban centers, the most intense urban village of all. Yet it is the hospitals in these intense urban settings that Children's explicitly references and seeks to emulate, in total denial of the actual characteristics and confines of its own low-density setting. Other hospitals that are located in lower density residential settings – Swedish at Cherry Hill (formerly Providence) and Northwest – operate under master plans that have MIO 105' and lower heights.

There is nothing in Laurelhurst's development context that supports MIO heights greater than 105' anywhere on its existing or expanded campus, especially when the result of Children's proposed MIO increase would be significant height, bulk and scale impacts on the surrounding community. Indeed, a credible argument could be made that the maximum height limit in Children's new master plan should be the same as in its currently approved plan: MIO 90. Instead, LCC has proposed MIO 105 for the tower(s) on the Laurelon Terrace property. This is not by "coincidence," but after assessing Laurelhurst's neighborhood context, Children's proposed development program and its height, bulk and scale impacts,



Children's current master plan and development, and the characteristics of other master plans and their contexts, and applicable regulatory provisions.

As a last point in its discussion of Examiner fallback Condition 3, Children's repeats the claim, already addressed in LCC's response, that its plan represents extraordinary mitigation rather than the "square peg in a round hole" the Examiner found after an in-depth review. This argument again illustrates the principle that where one ends up depends on where one starts.

Here, Children's starts by locating an unprecedented amount of development in the Laurelhurst neighborhood, at heights never before approved in this area or in Children's current master plan. It then ends up by labeling its reshuffling of some of its proposal for excessive development (and demolition of 136 units of housing) as extraordinary "mitigation." However, Children's all-or-nothing approach to master planning does not reduce or eliminate significant impacts for the community as a whole; it only moves them around, pitting one part of the neighborhood against another. While some residences located to the east of Children's may be less impacted by the current maximum build-out proposal compared to other maximum build-out alternatives in the EIS, those located in other directions would still be significantly impacted.

D. Children's Demand for Expansion of the Institutional Boundaries to the Hartmann Property Across Sand Point Way Is Illustrative of Why The Examiner's Denial Recommendation Is Correct: The Hartmann Expansion Should Be Eliminated From Any Master Plan Approval.

Children's has again acknowledged that it purchased the Hartman property across

Sand Point Way in 2000, just a few years into its current Master Plan, even though the

property was outside of its boundaries and not part of its approved Master Plan development.



Children's now makes every conceivable technical argument for avoiding the intent of the Code and expanding its campus across the street. It is not hard to understand why: if one is willing to ignore the impacts on the surrounding residential neighborhoods there is much to be gained by crossing the arterial and commencing intensive institutional development on the other side. However, from a land use and neighborhood perspective, this move is emblematic of what is wring with Children's all or nothing Master Plan . It is dependent on actions and expansions that are the type that the Major Institutions Code was explicitly adopted to prevent.

Children's and DPD argue that the Hartmann property across Sand Point Way is contiguous to Children's per SMC 23.34.124.B.2. Children's claim in particular is that it is "contiguous (by City standards) to the Laurelon Terrace portions of the expanded campus." At the outset, this concedes that Children claim is at best for a contingent continuity: if it is permitted to bring Laurelon Terrace within its institutional boundaries — a distinct proposition under the Code from simply buying it — then it can claim a dubious continuity.

However, it is doubtful whether the Code allows a Master Plan to expand the institutional boundary and then use that expansion as a pretext for further expansion across the street, all in one maneuver.

Worse yet, as the Council will observe on a site visit, Children's claim of contingent continuity is a stretch at best as a matter of geography. It depends entirely on "contiguity" between Laurelon Terrace and the point of a corner of Hartmann. However, the Code requires contiguity of the property as a whole, not of a gerrymandered pinhead. Only the point of a corner of the Hartmann property is across Sand Point Way from Laurelon Terrace. The Hartmann property is actually separated from Laurelon Terrace by two streets (Sand



Point Way NE and 40th Avenue NE) and privately owned and developed property (Wells Fargo Bank), which would be sandwiched between Children's development under Children's proposed Master Plan. Ex. 6, Figure 2-4, rev, p.2-18; Ex. 22, Attachment G, February 2009 Map. The map in Exhibit 22, Attachment G shows that Children's will be creating the very conditions for the Wells Fargo site and remaining properties along 40th Ave NE – sandwiched between major institution uses and properties, isolated from other non-institutional uses and properties – that the adjacency requirement is intended to avoid.

Why then do the Examiner's fallback conditions allow for the leap? Because, in the absence of the denial that the Examiner strongly recommended, it might relieve some of the development pressure on the other side of the street. See, e.g., Examiner Conclusion 9 and LCC Appeal at 23-25. The Examiner concluded that "the benefits to the neighborhood of placing some of the proposed development at Hartmann outweigh the risks." Conclusion 12. Of course, this means that if square footage and corresponding impacts on the rest of campus are reduced, or denied, as the Examiner strongly recommended in the first instance, the Examiner's primary rationale for including Hartmann in the MIO evaporates.

Equally important, however, the "benefits" that expansion Hartmann would provide are both illusory and, even if real, would come at too high a price. Preventing the incremental expansion of institutional boundaries into surrounding neighborhoods has been a cardinal tenet since the Major Institution Code's inception. The Hartmann leap would violate this tenet in egregious fashion and lay the groundwork for more. Having successfully gambled by buying Hartmann in 2000 when its Master Plan did not allow for its use, there is nothing to prevent Children's from repeating the maneuver. And, there will be a track record to suggest that it can do so with impunity.



Children's also points to a divided report in which a CAC majority went along with taking Hartmann into Children's boundaries. What Children's does not acknowledge is that the CAC originally voted to exclude Hartmann from the MIO. Ex. 8 at 149. Then, as described in one CAC minority report, CAC was more or less forced to reconsider and accept inclusion of Hartmann in the MIO:

"... it wasn't until the 11th hour that we were given Alternative 7r. This alternative was as close as the CAC was going to get to our input (much of our input was left off because it did not fit CHRMC's vision). Funny, but Alternative 7r INCLUDED the Hartmann property even though it was already voted off the MIMP by the CAC with a majority vote (and later overturned to work with Alt. 7r. This was the last alternative given to us because we were out of time."

Ex. 8 at 253. Even then, six members of the CAC signed on to another minority report sticking with the CAC's original recommendation that the Hartmann property not be included in the MIO. Ex. 8, p. 243-244.

Children's also cites to the Examiner's finding that, as a physical matter, the Hartmann property is screened in one direction by a slope and the Burke-Gilman trail – and wonders why LCC did not object to this description of topography. In doing so, Children's confuses LCC's approach with its own. LCC will not subscribe to Children's practice of imposing on the Council a "scorched earth" attorney's debate about matters that are not really at issue. Here, the issue is not the physical question of whether the Hartmann property is screened in one particular direction by the Burke Gilman Trail. Whether it is or not does not resolve the fundamental zoning question posed by Children's proposal to extend its boundaries across Sand Point Way to property it purchased in 2000, despite the clear knowledge that neither its Master Plan nor the Major Institutions Code contemplated such a move.



Because the Hartman property has been used for grandfathered low rise low intensity neighborhood doctor purposes, Children's also is dismissive of the fact that its expansion to Hartmann eliminates 1.7 acres of residentially-zoned land. However, only in Children's view are the current – and here longstanding – zoning and Comprehensive Plan designations of a property proposed for rezone irrelevant to rezone analysis. The Hartmann site is currently underdeveloped, making it a prime candidate for redevelopment in accordance with its residential zoning and a prime property to help sustain the amount of residential units in the neighborhood and area. Instead, Children's proposes a rezone to a use and an intensity far beyond its current grandfathered use.

Children's proposal to eliminate the 136 garden townhouses on the Laurelon Terrace site necessarily aggravates the situation. It makes the concern about precedent, already present in the Code, all the more appropriate. While the Examiner, in Conclusion 12 says that, "[I]t seems highly unlikely that Children's would choose to grow into the multifamily area north of Hartmann, and under the existing Code, it cannot expand into the single-family neighborhood west of the Burke Gilman Trail," the same statements could have been made about Laurelon Terrace. Yet, Children's is now acquiring and demanding that it be permitted to raze the entire 136 unit garden apartment community.

Two years ago, such a move might have also been considered "highly unlikely," but Children's accomplished it with relative swiftness, beginning with its first "proposal" (threat) to build 240' towers opposite the garden townhouses, which no doubt hastened purchase negotiations.

E. Vehicular Access To Children's Campus From 40th Avenue NE Needlessly Imposes Institutional Impacts On The Adjacent Residential Neighborhood.



Children's Response does not dispute that it is the intensity of development under Children's new 2.4 million square foot Master Plan that prompts the proposal to establish two new vehicular accesses to the hospital, including for the new SW parking garage (for 1100 vehicles), off of 40<sup>th</sup> Avenue NE, a residential neighborhood, local access street.

Here, as elsewhere, the key to understanding the problem is recognition that it is brought on by Children's all or nothing proposal – for which the Examiner has recommended denial. The 2.4 million square feet of development Children's demands outstrips the capacity of Sand Point Way to handle Children's ingress and egress traffic. The "solution?" To offload impacts onto the neighborhood. The Examiner's fallback condition recognizes as much when she says that "moving one of the access points to Sand Point Way would degrade traffic operations on that arterial." Hearing Examiner Conclusion 26.

In other words, given the substantial impact burden Children's over-the-top expansion will already impose on Sand Point Way, the neighborhood will have to take the hit. The "good news" per the Examiner is that the two access points "will operate at LOS C or better" on average. Id. However, even if this happy conclusion were accepted, it does not speak to the queuing and obstructions that go into such a calculation.

Children's and its allies have pointed to the CAC majority recommendations as conclusive – even where the Examiner differed. However, on the issue of 40<sup>th</sup> Avenue NE, Children's cannot do that because, as it concedes, the CAC "recommended that there be only one access from 40th Avenue NE, 'to serve either the emergency room or general parking, but not both.' Ex. 8, Recommendation 9. The CAC also recommended that traffic leaving Children's Southwest Garage go north only on 40th Avenue NE." A CAC divided report went even further in barring use of 40<sup>th</sup> Ave. NE. Yet, Children's went to great lengths to convince



the Hearing Examiner to reject both of these recommendations, which she did in her fallback conditions.

LCC has never viewed the CAC recommendations as sacrosanct, particularly in light of the CAC's skewed composition and the pressure placed on it by Children's. However, it is noteworthy that, for all of that, the CAC members <u>agreed</u> on severely limiting use of 40<sup>th</sup> Avenue NE. Yet, Children's, as ever in all-or-nothing mode, refuses to accept their recommendation.

That the Examiner did so is consistent with her over-all approach. As her decision unmistakably conveys, her considered recommendation is that Children's take it or leave it proposal should be <u>denied</u>. The fallback conditions she accepts are just that: fallbacks assuming that the Council will decide to allow Children's to proceed as it has proposed.

#### F. The Southwest Parking Garage Should Be Placed Underground.

In discussing the Southwest Parking Garage Children's again picks a fight that does not exist and ignores the issue that does. LCC's appeal (at 34) states that:

Many hospitals in the area have successfully constructed underground parking. Ex 22, Eychaner Comments; Ex. 8, CAC Final Report (Minority Report attached as Appendix 1), at 249-250. One example is Overlake Hospital, in downtown Bellevue by I-405, which recently made effective use of limited land resources by constructing its new multi-level hospital bed wing on top of its new, multi-level underground parking garage. Id. An added benefit of locating garages underground is that it allows for the best use of limited land by the hospital, and more land area for beds and associated facilities on the main campus, while providing necessary mitigation for the neighborhood.

Children's reads that back as LCC demanding that "Children's should put a bed wing on top of the garage (Appeal at 34)." Citing an example where a bed wing was built over a



multi-level below grade parking garage does not equate to a demand that that occur in precisely the same fashion on Children's campus. It <u>does</u> equate to an acknowledgement that there are alternatives which should have been explored before Children's adopted its "my way or the highway" approach, leaving a substantial portion of its parking garage needlessly above-grade. Nevertheless, Children's Response goes off and running on this straw man, leaving behind the real question of why it will not explore alternatives placing the garage below grade. Children's is demanding approval to cram 2.4 million square feet into a residential neighborhood, and significantly expand its boundaries against clear Code direction not to do so, but it will not offer an alternative placing a garage entirely below grade.

Under the current, adopted master plan, Children's was able to achieve development standards that are comparatively reasonable and compatible with the surrounding neighborhood — maximum MIO height of 90' (with a small footprint); less than 35% lot coverage; and an FAR of .9 — without building structures on top of underground parking garages and without any boundary expansions. Children's new proposal sweeps this all aside, making underground parking garages a necessity that cannot be ignored.

Children' additional argument's against undergrounding the parking garage depend on its consistent insistence on no square footage reductions and restriction of "alternatives" that just shift around significant impacts rather than actually reduce them. Undergrounding of massive parking garages is common; its accomplishment is not rocket science. It is done routinely by institutions and developers who recognize that fig leaf "landscaping" and "screening" are weak palliatives for the face with which such a structure and use confronts a residential neighborhood.



It is no wonder then that, faced with Children's refusal to offer alternative designs and plans, the Examiner refused to allow her hands to be tied and recommended, per Code, denial. And, as explained in LCC's Appeal, even her fallback conditions include a prohibition on above-grade development in setback areas which would seem to preclude Children's plan for the garage. See LCC Appeal at 32-35.

## G. The Examiner's Housing Fallback Condition on Housing Should be Modified To Require Actual Comparable Replacement Without In Effect Crediting Public Funds to Children's Obligation.

The Displacement Coalition/Task Force appellants have explained the fallacy in Children's and DPD's approach to the Code's comparable replacement housing requirement. For the reasons stated previously and by the Coalition/Task Force, the Examiner's fallback condition regarding housing should be revised.

#### H. Peripheral Policies cannot justify Children's Plan.

In one of its few independent comments, DPD complains that LCC exaggerated the inconsistency of Children's master plan with Comprehensive Plan goals and policies, and cites in support of its claimed exaggeration that LCC only identified inconsistencies with six goals and policies. However, LCC focused on those in the RFEIS that had the most relevance to the fundamental issue of balance, preservation of a neighborhood's livability and vitality, and neighborhood context. LCC could have also cited additional goals and policies, including LUG35, LU179, LU186, and LU199, that addressed similar or other critical issues such as boundary expansion and were also determined by the RFEIS to be in conflict with Children's proposed master plan. In contrast, DPD's Response offers a litany of "consistent" goals and policies that are, upon examination, principles for the general master planning process, but are not germaine to the fundamental balancing that City Counci must make. For example, it

dwells heavily on policies that allow the establishment of a citizens advisory committee or identify master plan contents as if compliance with such procedural <u>guidance</u> could outweigh or excuse noncompliance with core policies addressing <u>substance</u>. This approach is misguided.

## I. <u>LCC's Appeal Per The Requirements Of The Code Identifies Specific</u> <u>Objections To The Hearing Examiner's Recommendation and Specifies The Relief Sought.</u>

The Code requires that an appeal of an Examiner's decision "clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought." There is no requirement in the Code for listing specific Findings and Conclusions in the Appeal initiating Council review. Nevertheless, LCC's Appeal does that and more in 40 pages of point by point discussion complete with citations to the Record and the Examiner's decision. Children's attempt to conjure up some unmet appeal requirement is a measure of its desperation, not an honest reflection of the Code or LCC's appeal. In any event, as discussed in detail above, many of the Findings which Children's would like to debate are beside the point of the quasi-judicial land use decision before the Council.

#### **CONCLUSION**

For all of the reasons discussed above and in other submissions by LCC as well as those in concurrence with LCC's Appeal including Hawthorne Hills, the Federation, the Displacement Coalition/Interfaith Task Force, and individual commentators, LCC respectfully requests that the Council uphold the Examiner's denial recommendation. In the alternative, if

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the Council, after individual review of the complete Record, determines that it has been proven that the Examine recommendation was in error, it should grant the relief requested in LCC's Appeal including modification of the Examiner's fallback conditions.

Respectfully submitted this 28th day of September, 2009.

EGLICK KIKER WHITED PLLC

By

Peter J. Eglick WSBA #8809 Attorneys for Appellant

Laurelhurst Community Club

I certify under penalty of perjury under the laws of the State of Washington that the

foregoing is true and correct.

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Dated this 28td day of September, 2009, at Seattle, Washington

Fred Schmidt, Legal Assistant

